



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1210

[Document Number AMS-SC-19-0109]

Watermelon Research and Promotion Plan; Realignment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal invites comments on realigning the representation on the National Watermelon Promotion Board (Board) prescribed in the Watermelon Research and Promotion Plan (Plan) by reducing the number of production districts and reducing the number importers on the Board, accordingly. This action would contribute to effective administration of the program.

DATES: Comments must be received by [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. All comments must be submitted through the Federal e-rulemaking portal at <http://www.regulations.gov> and should reference the document number and the date and page number of this issue of the **Federal Register**. All comments submitted in response to this proposed

rule will be included in the rulemaking record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting comments will be made public on the internet at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Stacy Jones King, Agricultural Marketing Specialist, Promotion and Economics Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue, SW., Room 1406-S, Stop 0244, Washington, DC 20250-0244; telephone: (202) 731-2117; facsimile: (202) 205-2800; or electronic mail: Stacy.JonesKing@usda.gov.

SUPPLEMENTARY INFORMATION: This proposal affecting 7 CFR part 1210 is authorized under the Watermelon Research and Promotion Act (Act) (7 U.S.C. 4901-4916).

Executive Orders 12866, 13563, and 13771

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules and promoting flexibility. This action

falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this rule does not meet the definition of a significant regulatory action it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs'" (February 2, 2017).

Executive Order 13175

This action has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation would not have substantial and direct effects on Tribal governments and would not have significant Tribal implications.

Executive Order 12988

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. The Act provides that it shall not affect or preempt any other State or Federal law authorizing promotion or research relating to an agricultural commodity.

Under section 1650 of the Act (7 U.S.C. 4909), a person may file a written petition with USDA if they believe that the Plan, any provision of the Plan, or any obligation imposed in connection with the Plan, is not in accordance with the law. In any petition, the person may request a modification of the Plan or an exemption from the Plan. The petitioner will have the opportunity for a hearing on the petition. Afterwards, an Administrative Law Judge (ALJ) will issue a decision. If the petitioner disagrees with the ALJ's ruling, the petitioner has 30 days to appeal to the Judicial Officer, who will issue a ruling on behalf of USDA. If the petitioner disagrees with USDA's ruling, the petitioner may file, within 20 days, an appeal in the U.S. District Court for the district in which the petitioner resides or conducts business.

Background

This proposal invites comments on realigning the Board's representation and procedures under the Plan. The Board administers the Plan with oversight by USDA. The Plan is a nationally coordinated program of research, development, advertising, and promotion designed to strengthen the watermelon's position in the marketplace and to establish, maintain, and expand markets for watermelons. The program is

financed by assessments on producers growing 10 acres or more of watermelons, handlers of watermelons, and importers of 150,000 pounds of watermelons or more per year. The Plan specifies that handlers are responsible for collecting and submitting both the producer and handler assessments to the Board, reporting their handling of watermelons, and maintaining records necessary to verify their reporting(s). Importers are responsible for payment of assessments to the Board on watermelons imported into the United States through U.S. Customs and Border Protection (Customs).

This proposal invites comments on realignment of the Board by reducing the number of production districts under the Plan for producer and handler representation on the Board, and proportionally reducing the number of importer seats on the Board from twelve to nine. The Board administers the Plan with oversight by USDA. These changes were recommended by the Board after a review of the production volume and assessments paid in each production district as well as the assessments paid by importers. The Plan requires that such a review be conducted at least every 5 years. These changes would help facilitate program operations and the Board voted to forward this

recommendation to the Secretary at their October 26, 2019 meeting.

Section 1210.320(a) of the Plan specifies that the Board shall be comprised of producers, handlers, importers, and one public representative appointed by the Secretary. Pursuant to § 1210.320(b), the Plan originally divided the United States into seven districts of comparable production volumes of watermelons, and each district was allocated two producer members and two handler members. Section 1210.320(d) specifies that importer representation on the Board shall be proportionate to the percentage of assessments paid by importers to the Board, except that at least one representative of importers shall serve on the Board.

The current Board is comprised of 41 members - 14 producers (two from each district), 14 handlers (two from each district), 12 importers, and one public member.

Review of U.S. Districts

Section 1210.320(c) requires the Board, at least every five years, to review the districts to determine whether realignment is necessary. In conducting the review, the Board must consider: (1) The most recent three years of USDA production reports or Board assessment reports if USDA production reports

are unavailable; (2) shifts and trends in quantities of watermelon produced, and (3) other relevant factors. As a result of the review, the Board may recommend to USDA that the districts be realigned.

Pursuant to § 1210.501 of the Plan, the seven current districts are as follows:

District 1 - The State of Florida;

District 2 - The States of Kentucky, North Carolina, South Carolina, Tennessee, Virginia and West Virginia;

District 3 - The State of Georgia;

District 4 - The States of Connecticut, Delaware, Illinois, Indiana, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Wisconsin, and Washington, DC;

District 5 - The State of California;

District 6 - The State of Texas;

District 7 - The States of Alabama, Alaska, Arizona, Arkansas, Colorado, Hawaii, Idaho, Iowa, Kansas, Louisiana, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming.

The districts listed above were recommended by the Board in 2016 and established through rulemaking by USDA in 2017 (82 FR 44966).

In 2019, the Board's Executive Committee conducted a review of the U.S. watermelon production districts to determine whether realignment was necessary. The committee held teleconferences on August 14 and September 11, 2019, and reviewed production data for 2016, 2017 and 2018 from USDA's National Agricultural Statistics Service's (NASS) Vegetables Annual Summary for 2018 and Market News Reports. Due to changes in the geographical coverage of USDA's data collection on watermelon production, Board assessment data was used for the states for which USDA data was not available. To protect personally identifiable information (PII) of watermelon producers and handlers, the average of 2016-2018 assessment data was converted to a percentage of production. The combined data is shown in Table 1 below.

Table 1. State Production based on USDA and Board Assessment Data 2016-2018

State	% of 3-Year Average of U.S. Production
Alabama	0.2%
Arizona	2.9%
Arkansas	0.8%

California	13.8%
Colorado	0.4%
Delaware	2.8%
Florida	17.9%
Georgia	18.0%
Hawaii	0.1%
Illinois	1.8%
Indiana	10.6%
Kentucky	0.2%
Louisiana	0.1%
Maryland	1.9%
Michigan	2.3%
Mississippi	0.2%
Missouri	4.3%
Nebraska	0.2%
New Mexico	0.6%
New York	0.6%
North Carolina	4.0%
Ohio	0.1%
Oklahoma	0.2%
Oregon	1.0%
South Carolina	1.8%
Texas	11.8%
Virginia	0.3%
Washington	1.1%

Upon review, the Board recommended at their October 26, 2019 meeting to reduce the number of U.S. production districts from seven to five, thus eliminating two districts, retaining two districts as drawn, and creating three new districts. The proposed districts would be as follows:

District 1 - The State of Florida (no change);

District 2 - The State of Georgia (formerly District 3).

District 3 - The States of Alabama, Arkansas, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas.

District 4 - The States of Connecticut, Delaware, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Maine, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, Wisconsin, and Washington, DC.

District 5 - The States of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming.

As shown in Table 2, each district would represent, on average, 20 percent of the total U.S. production, with a range of approximately 18 to 24.5 percent. USDA has reviewed NASS, Market News, and Board assessment data, and as shown in Table 2, determined that the production estimates are consistent with the Board's recommendation.

Table 2. Proposed Percent of U.S. Production by District¹

District	Board Data	USDA Analysis	Difference
1	17.8%	18.2%	+0.4%
2	18.0%	18.0%	None

¹ Table values were rounded to the nearest percent.

3	19.0%	19.2%	+0.2%
4	20.6%	20.7%	+0.1%
5	24.5%	23.9%	-0.6%

Section 1210.501 of the Plan would be revised accordingly.

Review of Imports

Section 1210.320(e) of the Plan requires USDA to evaluate the average annual percentage of assessments paid by importers during the three-year period preceding the date of the evaluation and adjust, to the extent practicable, the number of importer representatives on the Board.

Table 4 below shows domestic and import assessment data for watermelons for the years 2016, 2017 and 2018. The data is from the Board's financial audits for 2016, 2017² and 2018.

Table 4. U.S. and Import Assessment Data for 2016-2018

Year	Domestic (U.S.) Assessments	Import Assessments	Total
2016	\$2,319,704	\$1,172,834	\$3,492,538
2017	\$2,347,522	\$1,049,875	\$3,397,397
2018	\$2,311,116	\$1,041,244	\$3,352,360
3-Year Average	\$2,326,114	\$1,087,984	\$3,414,098
Percent of Total	68 percent	32 percent	

Based on this data, the three-year average annual import assessments for watermelons for 2016-2018 was \$1,087,984, approximately 32 percent of the Board's assessment income. To

² National Watermelon Promotion Board, Financial Statements and Supplementary Information, Years Ending March 31, 2016, 2017, and 2018, BDO USA, LLP

make the number of importers on the Board proportionate to the assessments paid as well as to the percentages of U.S. watermelon produced by the reduced number of production districts, the number of importers should decrease from twelve to nine members.

In order to clearly summarize the change in board membership for producers, handlers, and importers, § 1210.502 of the Plan would be revised to reflect the new composition of the Board.

Initial Regulatory Flexibility Act Analysis

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS is required to examine the economic impact of the proposed rule on the small entities. Accordingly, AMS has considered the economic impact of this action on such entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. The Small Business Administration defines, in 13 CFR part 121, small agricultural producers as those having annual receipts of no more than \$1,000,000 and small agricultural service firms

(handlers and importers) as those having annual receipts of no more than \$30 million.

According to the Board, there are 505 producers, 140 handlers, and 252 importers who were required to pay assessments under the Plan in 2018. NASS data for the 2018 crop year estimated about 350.5 hundredweight (cwt.) of watermelons were produced per acre in the United States, and the 2018 grower price was \$16.90 per cwt.³ Thus, the value of watermelon production per acre in 2018 averaged about \$5,923 (350.5 cwt. x \$16.90). At that average price, a producer would have to farm over 169 acres to receive an annual income from watermelons of \$1,000,000 (\$1,000,000 divided by \$5,923 per acre equals approximately 169 acres). Using 2017 USDA Census of Agriculture data, a maximum of 119 farms had watermelon acreage greater than or equal to 250 acres, and 13,401 out of a total of 13,520 farms producing watermelons reported less than 250 acres of watermelon on their farms.⁴ Therefore, assuming watermelon producers operate no more than one farm, a majority (99 percent) of all U.S. watermelon farms would be classified as small businesses.

3 Vegetables, 2018 Summary, March 2019, USDA, p. 10.;
<https://downloads.usda.library.cornell.edu/usda-esmis/files/02870v86p/gm80j322z/5138jn50j/vegean19.pdf>

4 2017 Census of Agriculture, April 11, 2019, USDA, National Agricultural Statistics Service, p. 39;
https://www.nass.usda.gov/Publications/AgCensus/2017/Full_Report/Volume_1,_Chapter_1_US/usv1.pdf.

Also based on the Board's data, using a price of \$0.169 per pound and the number of pounds handled annually, none of the watermelon handlers have receipts over the \$30 million threshold.^{5,6} Therefore, all watermelon handlers would be considered small businesses. A handler would have to ship over 177 million pounds of watermelons to be considered large (177,514,793 x \$0.169 f.o.b. equals approximately \$30,000,000).

Based on 2018 Customs data, over 99 percent of watermelon importers shipped less than \$30 million worth of watermelons that year. Based on the foregoing, the majority of watermelon producers, handlers and importers that would be affected by this proposed rule would be classified as small entities.

Regarding the value of the commodity, based on 2018 NASS data, the value of the U.S. watermelon crop was about \$656.6 million.⁷ According to Customs data, the value of 2018 imports was about \$312.4 million.

This proposal invites comments on revising §§ 1210.321, 1210.423, 1210.501 and 1210.502 of the Plan to reduce the number of U.S. production districts from seven to five, thus eliminating two districts, retaining two districts as drawn, and

⁵ Vegetables, 2018 Summary, March 2019, USDA, <https://downloads.usda.library.cornell.edu/usda-esmis/files/02870v86p/gm80j322z/5138jn50j/vegean19.pdf>

⁶ National Watermelon Promotion Board assessment records, 2016-2018.

⁷ Vegetables, 2018 Summary, March 2019, USDA, p. 10.

creating three new districts. Accordingly, § 1210.320 requires the number of importer members to also decrease proportionately from 12 to 9 members, for a total of 30 Board members.

The Plan currently divides the United States into seven districts of comparable production volumes of watermelons, and each district is allocated two producer members and two handler members. Further, importer representation on the Board must be, to the extent practicable, proportionate to the percentage of assessments paid by importers, except there must be at least one importer on the Board.

At least every five years, the Board is required to evaluate, based on the preceding three-year period, the average production in each production district and the average annual percentage of assessments paid by importers. The Board conducted this review in 2019 and recommended reducing the number of districts from seven to five. Authority for these changes is provided in § 1210.320 of the Plan.

Regarding the economic impact of the proposed rule on affected entities, neither the reduction in the number of production districts nor the reduction in Board membership imposes any additional costs on industry members. The recommended changes are necessary to improve the Board's ability

to ensure both a quorum at Board meetings and a sufficient number of potential nominees. Further, the accompanying reduction of importer seats from twelve to nine provides for the equitable representation of producers, handlers and importers on the Board.

Regarding alternatives, the Board considered two scenarios in realigning the districts. Scenario 1 would divide the U.S. into four production districts, and Scenario 2 would divide the U.S. into five production districts. In accordance with the Plan, both scenarios preserve the composition of 2 producers and 2 handlers per district. Ultimately the Board recommended Scenario 2, retaining the State of Florida as District 1, changing the district designation for Georgia from District 3 to District 2, and creating new Districts 3, 4, and 5 as follows:

a) District 3 would be comprised of the States of Alabama, Arkansas, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas;

b) District 4 would be comprised of the States of Connecticut, Delaware, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Maine, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, Wisconsin, and Washington, DC; and

c) District 5 would be comprised of the States of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming.

In accordance with § 1210.320, the Board recommended the alignment scenario described in this proposed rule because it: (1) would provide for a proportional geographical representation on the Board for producers and handlers; (2) would not create any producer or handler vacancies on the Board; and (3) would increase the pool of candidates to be considered for appointment to the Board by the Secretary.

Reporting and Recordkeeping Requirements

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Plan's information collection and recordkeeping requirements have been approved previously under OMB number 0581-0093. This proposed rule would not result in a change to the information collection and recordkeeping requirements previously approved and would impose no additional reporting requirements or recordkeeping burden on domestic producers, handlers, or importers of watermelon.

As with all Federal promotion programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Regarding outreach efforts, the Board's Executive Committee held teleconferences on August 14 and September 11, 2019 to review the production data to assess whether changes to the number of districts and district boundaries were warranted. All Board and committee meetings, including meetings held via teleconference, are open to the public and interested persons are invited to participate and express their views.

AMS has performed this initial RFA analysis regarding the impact of these changes to the Plan on small entities and invites comments concerning potential effects of this action.

USDA has determined that this proposed rule is consistent with and would effectuate the purposes of the Act.

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments received in response to this proposed rule by the date specified will be considered prior to finalizing this action.

List of Subjects in 7 CFR Part 1210

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Reporting and recordkeeping requirements, Watermelon promotion.

For the reasons set forth in the preamble, 7 CFR part 1210 is proposed to be amended as follows:

PART 1210—WATERMELON RESEARCH AND PROMOTION PLAN

1. The authority citation for 7 CFR part 1210 continues to read as follows:

Authority: 7 U.S.C. 4901-4916 and 7 U.S.C. 7401.

Subpart C - Rules and Regulations

2. Amend § 1210.321 by revising the section heading and paragraph (f)(1) to read as follows:

§ 1210.321 Realignment of districts.

* * * * *

(f) * * *

(1) No State in a multi-State district shall have more than three producer and handler representatives concurrently on the Board.

* * * * *

3. Amend § 1210.403 by revising paragraph (c) to read as follows:

§ 1210.403 Voting procedures.

* * * * *

(c) In multi-State districts, the convention chairperson will direct the eligible producer voters and handler voters from each State to caucus separately for the purpose of electing a State spokesperson for each group. Election of each State spokesperson shall be by simple majority of all individual voters in attendance. In lieu of written ballots, a State spokesperson may be elected by voice vote or a show of hands. The role of the State spokesperson is to coordinate State voting and to cast all State votes.

* * * * *

4. Section 1210.501 is revised to read as follows:

§ 1210.501 Realignment of districts.

In accordance with § 1210.320(c) of the Plan, the districts shall be as follows:

(a) District 1 - The State of Florida.

(b) District 2 - The State of Georgia.

(c) District 3 - The States of Alabama, Arkansas, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas.

(d) District 4 - The States of Connecticut, Delaware, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Maine, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, Wisconsin, and Washington, DC.

(e) District 5 - The States of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming.

5. Section 1210.502 is revised to read as follows:

§ 1210.502 Board members.

The Board consists of 10 producers, 10 handlers, nine importers, and one public member appointed by the Secretary.

Bruce Summers

Administrator

[FR Doc. 2020-08395 Filed: 4/24/2020 8:45 am; Publication Date: 4/27/2020]